COURT, U. S.
DEC 4 1973

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73-866

MICHAEL S. ROSS,

Petitioner,

vs.

STATE OF CALIFORNIA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL S. ROSS

2879 Rutgers Avenue
Long Beach, CA 90815

In Properia Persona

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IN THE

SUPREME COURT OF THE UNITED STATES

October, Term 1973

No. _____

MICHAEL S. ROSS,

Appellant-Petitioner,

-v.-

STATE OF CALIFORNIA,

Appellee-Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court Of Appeals For the Ninth Circuit entered on March 31, 1973.

OPINIONS BELOW

The opinion of the United States Court Of Appeals For the Ninth Circuit and the United States District Court For the Northern District Of California are both unreported. But they bear the miscellaneous numbers 72-8143 and 72-1437-CBR, respectively and are set forth in full in the appendix, infra,

pp. 25-26. Theretofore denials of petitioner's petitions on like grounds were entered in chronological succession by the Superior Court of Contra Costa County, opinion attached, p. 27, the First District Court Of Appeals, and the California Supreme Court, both of the latter without opinion on October 6, 1971, April 19, 1972 and July 12, 1972, respectively.

JURISDICTION TO REVIEW

The judgment of the Ninth Circuit Court Of Appeals denying petitioner's application for a Writ Of Habeas Corpus was entered on March 12, 1973. This petition was originally filed on April 10, 1973, less than 90 days from the aforesaid date. Jurisdiction to review this application innurs to this Court pursuant to the provisions of 28 U.. S. C., §2254. Power to grant the writ requested herein is inherent in this Court under 28 U. S. C., §2241.

QUESTIONS PRESENTED

1. Whether the entry of a false statement representing that one has resigned his commission concealing the act of thieving that said one's military commission on that one's military discharge record by another is a felony crime punishable under 10 U. S. C., §1001 and 10 U. S. C., §3?

2. Whether the United States Attorney's office for the Central District Of California as a governmental agency, alone possessors of the proof of both criminal acts of theft and concealment are at petitioner's admonition and complaint duty bound and legally compelled to proceed against these two criminals?

3. Whether petitioner in threatening Dr. Carden if he did not do what he was already bound by law to do can in any way be construed as guilty of any crime, California Business and Professions Code, §2411 and 10 U. S. C., §1001?

4. Whether the Superior Court erred in denying petitioner's intial motion to implead the Veterans Administration on the grounds that only discovery devices instituted and ordered to be complied with by a federal agency would enable petitioner to secure the official Naval Reserve records necessary to irrefuteably establish whether petitioner's or Dr. Carden's rendition of that record was the truth?

5. Whether the Superior Court erred in refusing to remove Mr. Mintz as petitioner's counsel at any time in the proceedings that petitioner became dissatisfied with Mr. Mintz as Mr. Mintz revealed his true turncoat colors and replace him with the only person competent to defend petitioner with a knowledge of the truth, namely, petitioner?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provision upon which this case turns is the Fifth Amendment to the United States Constitution, set out in the Appendix, infra, p. 20. Of primary consideration as well in this appeal are the statutory provisions of U. S. C., Title 18, §3 and §1001, federal criminal intent to defraud and California Penal Code, §524 all of which are set forth in the Appendix, infra, pp. 20-21.

Of auxilliary importance in arriving at a just determination of the premises are U. S. C., Title 10, §818, §819, §820 and §933, Article 95 of the Articles of War, and the

Supremacy Clause, Article IV, set out in the Appendix, infra, p. 21.

STATEMENT OF THE CASE

Some twelve years ago petitioner volunteered for service in the United States Navy and in so undertaking pledged his life to the preservation of those fundamental human rights which we all, as Americans, hold intimately dear. Petitioner further took a solemn oath to protect her by whatever means necessary against all her enemies both foreign and domestic, see Appendix, infra, p. 22. Petitioner spent five and one-half faithful years in the Naval Reserve advancing as rapidly as legally possible at NRSD 11-3 until transferring to NRSD 12-26, Treasure Island where in the usurpation of petitioner's electronic technician third class rating and Naval Reserve commission without benefit of courts-martial or even administrative hearing, though demanded, petitioner experienced a more flagrant criminal subjugation of these rights than the United States has ever seen and maybe ever will see.

In perpetrating the alleged act complained of petitioner relied upon the advisement of hundreds of private attorney's, the Veterans Administration, the Los Angeles County District Attorney, the Office Of the United States Attorney For the Central District Of California, the legal aid of the State Of California at Long Beach, the American Civil Liberties Union, the Fifth Amendment to the United States Constitution, a statute similar to U. S. C., Title 10, §1001 which the United States Attorney's Office refused to enforce and more recently the advice of attorney Richard Bryson.

Petitioner did not ask that his Naval Reserve Commission be restored but only that

his case be adjudicated, under the applicable laws, on the basis of the true facts, by a judicially competent authority. The very evidence which this petitioner intially sought to procure by way of compelling the Veterans Administration to perform its obligation to him under U. S. C., Title 38, §354 through agreement or suit, Appendix, pp. 23-24, and finally through Dr. Carden's admission convicts the latter of violating U. S. C., Title 18, §1001 and shows that Commander Jerry J. Holst's rejection of petitioner was accomplished on a whim by felonious fraud and deceit, absent, competent legal authority, U. S. C., Title 10, §818, §819, and §820 and unsubstantiated by the facts.

In response to the warrant, petitioner, then a first year law student at Loyola, appeared in Contra Costa County Municipal Court in his own behalf, moved for dismissal on the grounds that nothing but that which petitioner already possessed but the Veterans Administration and the United States Navy for five years refused to accede to or that which was criminally taken from him was sought, pleaded not guilty, moved to implead the Veterans Administration for the purpose of proving the truth of his statements and falsity of Dr. Carden's which was sought to have Dr. Carden admit he was told by petitioner when the Veterans Administration relied upon his false statements, Appendix, pp. 23-24, to deny the truth and prevent a fair adjudication on the true facts by a judicially competent authority, moved for a change of venue to Los Angeles in order to provide a competent forum for the subpeona of Veterans Administration witnesses and moved for a jury trial.

The court asked if petitioner wanted to seek the advice of an attorney. Petitioner replied that he had solicited the aid of several attorney's in Southern California,

but that with all the long distance costs involved all were prohibitively expensive and further that the dean of Loyola Law School had suggested an Oakland attorney who might be willing to handle the defense of this complaint. Whereupon, the court set a pretrial date of February 26, 1971. (Petitioner contemplated this action only because at that early date he did not believe himself well-versed enough in courtroom criminal law procedures, cross-examination and defensive objection tactics to do justice to restricting the testimony of prosecution witnesses and simultaneously to fairly airing his own case.) Later that day petitioner related the military and Veterans Administration activities of the preceding years (see Statement Of the Case in Ross v. U. S., 462 F. 2d. 318, (1972), your number 72-337) to Mr. Lincoln N. Mintz in his office. With the inducement of a Mintz alleged lawyer acquaintance who could clear up the controversy between petitioner and the Veterans Administration, Mr. Mintz's ostensible position of sympathy with petitioner's position coupled with his offer to handle petitioner's trial defense for a retainer of from $750.00 to $1000.00, petitioner assented to allow this fellow Berkeley alumus to prepare and conduct his trial defense.

Because of the complaining witness's unavailability and petitioner's missed airplane flight Mr. Mintz in supposed petitioner's behalf and the District Attorney's Office stipulated to a continuance of the matter until April 1, 1971.

On April 1, 1971, petitioner arrived early, before 9:00 A. M., but Mr. Mintz was late, after 9:30 A. M. When petitioner motioned to him for a conference, Mr. Mintz refused. Moments later

when Mr. Mintz had caused his case to be called by the court, Mr. Mintz impelled petitioner to an extremely hurried conference outside courtroom doors. Mr. Mintz opened with the suprise statement, "The District Attorney will recommend three years straight probation without condition of county jail sentence coupled with seeing a psychiatrist and the dropping of charges under Penal Code §523 in exhange for your plea of guilty to Penal Code §524. This is a recommendation in which Dr. Carden concurrs." Petitioner answered, "No way, forget it." He replied, "I think you are guilty." Petitioner returned, "You have got to be kidding me; there was no property." Mr. Mintz then said, "What about the $20,000.00." "That was only a request for a gift providing the doctor sympathized with the dire straits into which he had thrust me illegally and an indication of how muct I reasonably expect and am certain to receive as a result of the benefits which will be flowing my way from the Veterans Administration once the truth is learned upon the presentation of all my evidence thereto." Counsel then quickly altered his position to suggest that there was property sought in the right to maintain a claim for Veterans benefits and the actual benefits that might be derived therefrom. Petitioner refuted this falicious argument by stating that that was a right to which he and every other honorably discharged veteran is legally entitled. Counsel then turned on his heel and prepared to rush back into the courtroom saying menacingly, "Allright, then let's go to trial." When counsel thus refused and omitted to prepare any defense for petitioner, to defend petitioner on the basis of "no property," or "any property was already his," or "self-defense," or to defend petitioner by means of any other defense and proposed to go to trial without any defense

whatsoever in obvious unwavering committment to convict petitioner, he extorted petitioner out of all of his valid defenses and into pleading guilty and out of the services ostensibly procured by the retainer fees already paid him.

In the interim between April 1, 1971 and May 14, 1971, petitioner performed some legal research on his own; upon finding the case of People v. Robinson, 130 Cal. App. 664, (1933) he concluded that even he could do a better job than Mr. Mintz and determined to move to return his plea to not guilty on May 14, 1971, the date set for the sentencing hearing. On said date petitioner did so move the court in his own behalf. Mr. Mintz objected stating that the plea he administered was given freely and voluntarily. The court asks if petitioner has seen the probation report. Petitioner replies that no he has not. The court then again inquires whether petitioner would like to change his plea back. Undecided whether the better strategy would be to go to trial at that very moment on his own without access to proof or wait to see if his suit against the Veterans Administration will bring, at least, as a result of discovery devices his true Naval Reserve records and thereby irrefuteable proof of his innocence and the lies of Dr. Carden. While petitioner hesitates momentarily, the court takes the intiative and sentences him to observation under California Penal Code, §1203.3 to Vacaville Medical Facility.

Mr. Mintz represented on July 9, 1971, when petitioner was returned to court, as Judge Gregg contemplated the merits of petitioner's legally sufficient "Motion To Dismiss Counsel" and "Motion To Vacate Judgment And Set Aside the Guilty Plea" that if petitioner's motion to dismiss counsel were sustained, as

probable, petitioner would not be allowed to go free on the bail already posted and handle the case on his own or procure alternate counsel, unlikely, on the street, but rather he would be returned to jail (where his life had been threatened, without reason, on several occasions) and be forced to retain additional counsel from that totally unnegotiable position. As petitioner was certain that Mr. Mintz would not be required to do anything on that occasion, he for that reason, and that reason alone allowed the motion to be withdrawn. Whereupon the court denied his companion motion.

After his release, petitioner, in properia persona, immediately perfected his direct appeal to the First District Court Of Appeals For the State Of California--an act asked of but refused by Mr. Mintz on May 14, 1971, launched his suit against the Veterans Administration in federal court, your number 72-337 and intiated this habeous corpus petition in the Conta Costa County Superior Court. The appellate court denied the appeal and its petition for rehearing solely on the grounds that the "notice of appeal' failed to allege that any errors had occurred after the entry of the guilty plea."

REASONS FOR GRANTING WRIT

1. When the Naval Reserve derives its very existence from and has as its sole purpose the maintenance of a posture of trained military back up units capable of taking over for, supplementing and augmenting the Regular Navy fleets in time of emergency, C. F. R., Title 32, §101.1, Applicability and Purpose, does

the commanding officer of any one of such units, whose responsibility it is pursuant to C. F. R., Title 32, §713.381 to provide the trained personnel necessary to replace Regular personnel in cases where vulnerabilities arise in the national defense through attrition, have authority to allow one of his subordinate instructors to refuse for two consecutive years to perform the training functions required of his position and to advance petitioner or petitioner's classmates, to compel petitioner to attend this instructor's dity joke bull sessions and to remove petitioner from the officer ranks and return him to enlisted status in contravention of the rule promulgated by the Judge Advocate General's Office that, "Except as provided in the U. C. M. J., Art. 71, there is no authority in law or regulation to demote an officer or warrant officer to enlisted grade," for omitting to attend one such bull session although present at all musters, which omission is obviously allowable under C. F. R., Title 32, §101.3 (b) (1) (iii) on the grounds of "unofficer-like conduct," the conviction for which requires a general courts-martial adjudication, U. S. C., Title 10, §818, §819, §820 and §933 and automatic dismissal from the service, Article 95 of the Articles Of War without benefit of a courts-martial or administrative hearing though both were demanded. No he does not. His power to effect discipline is specifically limited to punitive punishments against both officers and enlisted by U. S. C., Title 10, §815 and the Fifth Amendment.

If it were petitioner's responsibility to, which it is not, and he were able to secure legal counsel, it would have for the purpose of removing the electronics technician instructor pursuant to C. F. R., Title 32, §730.12

(b) (2), Discharge of enlisted personnel by reason of unfitness for exhibiting an established pattern for shirking, not to defend himself against charges of "unofficer-like conduct." Indeed, it appears patently clear from the record that in derelictly refusing for, at least, two years to correct the illegal and malingering situation, it is Commander Holst rather than petitioner who is guilty of unofficer-like conduct.

Deadly fearful of the scornful effects of returning to civilian life with a criminal record and unconscionable of pledging his life in support of the criminals who had taken his $20,000.00 without any process of law, petitioner, knowing not what to do in the two months next preceding the advent of the final and commissioning summer, seeks refuge and concealment of this totally unwarranted reputation in the Air Force Reserve Officer Commissioning program. Within a few weeks after his Air Force commissioning though he was under orders to complete one year of weather officer schbol at San Jose State, he found himself in good conscience unable to continue pledging his life in the protection and concealment of the criminals at NRSD 12-26 and was discharged. Upon petitioner's discharge, the complaining witness, Dr. Norman L. Carden, represented, in defiance of petitioner's truthful statements and demands to record the true facts, to the Department Of the Air Force that he had resigned his Naval Reserve commission in order to join the Air Force. Immediately, then petitioner applied to his ownly known source of relief, the Veterans Administration, but they denied petitioner's truthful rendition of the facts even under threat of suit, Appendix, infra, p. 24, and accepted Dr. Carden's lies.

Thereafter, petitioner bounced around from lawyer to lawyer for six years seeking relief from the scourge of this unwarranted infirmity and criminality, but was unsuccessful because all believed Dr. Carden's written report rather than petitioner's verbal expression of the truth. Consequently, Dr. Carden's falsification effectively precluded even legal review and certainly legal removal of both his infamous diagnosis and the allegations of Naval Reserve criminality and thereby willfully, maliciously and feloniously illegally stole and deprived petitioner of several thousand dollars in contractual and certain civilian employment income in blatant criminal violation of U. S. C., Title 18, §1001 and U. S. C., Title 18, §3. The likelihood is that ordinary persons would never discover their legitimate source of relief from the illegal and unwarranted criminal conviction by NRSD 12-26 under these circumstances.

2. The decision of the United States Attorney's Office For the Central District Of California in refusing in 1969 to enforce U. S. C., Title 18, §1001 against the complaining witness in this case raises a fundamental question under the Supremacy Clause, Article VI, as to whether valid statutes of Congress are to continue to have priority over inconsistent state statutes. Whereas for other specific federal civil rights violations by state and federal officers Congress has recognized the need for and provided civil redress, as for instance, the Omnibus Crime Control and Safe Streets Act of 1968 which in U. S. C., Title 18, §2520 creates a private damage remedy for unauthorized interceptions of private conversations, violating §605 of the Federal Communications Act, of actual damages of $100.00 per day or a total of $1,000.00, if this is greater, Guido v. City Of Schenetady, 404 F. 2d. 728, (1968) and the existing state

damage actions for trespass, false imprisonment and injunctive relief as preventive sanctions against Fourth Amendment, Search and Seizure, violations, Bivens v. Six Unknown Named Agents Of the Federal Bureau Of Narcotics, 409 F. 2d. 718, 725, (1969), no such civil sanction exists tortfeasors falsifying government records.

In fact, to the contrary, Congress has seen fit in the federal Tort Claims Act, U. S. C., Title 28, §2680 to specifically exempt federal agents for liability for acts of "fraud."

Consequently, without enforcement of U. S. C., Title 18, §1001, the right to be free from the victimization, monetary loss and defamation of reputation occasioning the legal operation of false official records is left so wanting of vindication as to render it a mere "form of words." Accordingly, under the doctrine promulgated in Mapp v. Ohio, 367 U. S. 643, 655, 81 S. Ct. 1684, (1961), the time for judicial intiative in the form of mandamus to force this prosecution has arrived.

3. Since the State of California through its legal representative, Mrs. Helen Burke, see your number 72-337, utilized criminally illegal methods in violation of Evidence Code Sections 1012 and 1014 of the very state which seeks to invoke its own Penal Code Section 524 against petitioner to negligently effectuate the incarceration of petitioner and permit the false entry on his discharge record which is the subject of petitioner's threat of and illegal, U. S. C., Title 38, §211, suit against the federal government and this controversy, it cannot benefit from its own wrong by complaining to the courts of the mode petitioner utilized to correct this obvious criminal wrong, particularly when it refused to do so itself.

In 1969 the State of California's own legal aid lawyer, Mr. John Vaisey of Long Beach, denied the existence of any suit in which petitioner could engage in order to correct this discrepancy in his military discharge records or to show his obligation concluded upon severance from Naval Reserve officer status. Moreover, if the Veterans Administration had complied with U. S. C., Title 38, §354, then again the cause for petitioner's action would have been removed. Consequently, this action coupled with the Los Angeles District Attorney's refusal in 1969 to prosecute Mrs. Helen Burke constitutes denial of equal protection of the laws under the Fourteenth Amendment.

4. Inasmuch as, in view of the societically enuciated imbalance of reliability between petitioner and the complaining witness, retrieval of petitioner's true Naval Reserve records constituted the only positive, irrefuteable, means of resolving the controversy over the existence or non-existence of NRSD 12-26's criminal action, it was reversible error not to allow the impleading of the Veterans Administration.

5. In asserting that his detention is grossly illegal and inviolation of his constitutional rights under the 5th, 6th, 8th and 14th Amendments to the United States Constitution, petitioner relies primarily upon the rulings exposed in Reed v. U. S., 411 F. 2d. 569, (9th Circuit 1971) and the Supreme Court case, Milani v. Illinois, 386 U. S. 12, 87 S. Ct. 1289, (1967). In the former case, the Ninth Circuit has recently held that in order to show a denial of due process or the opportunity to show that a plea has not been made voluntarily it is not necessary that the evidence

adducing this finding be present in the record. In Milani v. Illinois, supra, as here, the defendant complained that he had been deprived of due process because his guilty plea was coerced by his own counsel's acting in collusion with the prosecuting attorney; where the defendant represented himself on appeal from a murder conviction, the Illinois Supreme Court rejected defendant's contention, inter alia, but the United States Supreme Court reversed the judgment of the Illinois Supreme Court.

The question of whether a guilty plea was entered voluntarily or induced by threats, coercion, undue influence or promise of leniency has been considered in a number of United States Supreme Court decisions of late. Probably, the most pertinent to the issues at bar here are Machibroda v. U. S., 368 U. S. 487, 82 S. Ct. 510, 7 L. Ed. 2d. 473, (1962); Malloy v. Hogan, 378 U. S. 1, 84 S. Ct. 1489, 12 L. Ed. 2d. 653, (1964) and interpreting Boykin v. Alabama, 395 U. S. 238, (1969), McMann v. Richardson, 397 U. S. 759, 90 S. Ct. 1441, 25 L. Ed. 763, (1970) and Brady v. U. S., 397 U. S. 742, 90 S. Ct. 1463, 25 L. Ed. 747, (1970).

After noting the requirement that a plea of guilty must be voluntary in order to be valid has long been recognized, and that the voluntariness of a guilty plea can be determined only by considering all of the relevant circumstances surrounding it, this Court in Brady v. U. S., supra, pronounced,

> "... the standard as to the voluntariness of guilty pleas must be essentially that a plea of guilty entered by one fully aware of the

direct consequences, including the actual value of any commitment made to him by the court, prosecutor, or his own counsel, must stand unless induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfilled or unfulfillable promises), or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business (for example, bribes)."

In citing, Machibroda v. U. S., supra, this Court in McMann v. Richardson, supra, reflected at page 787,

"We have, of course, held that a post-conviction hearing must be afforded to defendants whose allegations of constitutional violations of the due process of law are neither 'vague, conclusionary, or palpably incredible, nor patently frivolous or false,' Pennsylvania ex rel. Herman v. Claudy, 350 U. S. 116, 119, 76 S. Ct. 223, (1956). Respondents have raised at least three factual issues that the record in its present form does not resolve; (1) Whether confessions were obtained from them; (2) Whether these confessions, if given, were coerced; and (3) Whether respondents had a justifiable reason for their failure to challenge the validity of the confessions ... As to these issues, respondents, of course, bear the burden of proof."

Where a federal prisoner alleged that

he was induced to plead guilty by the promises of an Assistant United States Attorney that if he pleaded guilty, he would receive a total sentence of not more than 20 years and, further, that he was told by the Assistant United States Attorney that if he advised his lawyer of the promises, unsettled matters relating to other robberies would be added to his difficulties, the United States Supreme Court, Machibroda v. U. S., ruled, at page 493,

> "There can be no doubt that, if the allegation contained in the petitioner's motion and affidavit are true, he is entitled to have his sentence vacated. A guilty plea, if induced by promises or threats which deprive it of the character of a voluntary act, is void. A conviction based upon such a plea is open to collateral attack. See Walker v. Johnston, 312 U. S. 275, 61 S. Ct. 574; Waley v. Johnston, 316 U. S. 101, 62 S. Ct. 964; Sheldon v. United States, 356 U. S. 26, 78 S. Ct. 563."

> "We cannot agree with the government that a hearing in this case would be futile because of the apparent lack of any eyewitnesses to the occurrences alleged, other than the petitioner himself and the Assistant United States Attorney. The petitioners motion and affidavit contain charges which are detailed and specific. It is not unreasonable to suppose that many of the material allegations can either be corroborated or disproved by the visitor's records of the county jail where the petitioner was confined,

the mail records of the penitentiary to which he was sent, and other such sources."

Finally, in Malloy v. Hogan, supra, this Court admitted citing, Haynes v. Washington, 373 U. S. 503, 83 S. Ct. 1336, that,

> "We have held inadmissable even a confession secured by so mild a whip as the refusal, under certain circumstances, to allow a suspect to call his wife until he confessed."

See also, Bram v. U. S., 168 U. S. 532, 18 S. Ct. 183; Haley v. Ohio, 332 U. S. 596, 232 S. Ct. 302;

In California, under the doctrines propounded in Boykin v. Alabama, supra, in answering the State's contention that where a defendant receives advice from counsel before pleading guilty, his plea cannot be considered involuntary, it has been stated,

> "The weakness of this argument lies in the fact that for many years the California courts have recognized that when, through ignorance or omission, defense counsel causes or permits the loss or lack of a crutial defense, this is in effect a denial of counsel, infecting the conviction and is sometimes alone ground for reversal. (In re Williams, 1 Cal. 3rd. 168, 174-175, 8 Cal. Rep. 784, 460 P. 2d. 984, (1969)). There, the defendant's counsel permitted the defendant to enter a bargain plea of guilty to a crime which he did not commit. On habeas corpus the Supreme Court held that he was thereby denied his right to effective assistance of counsel. (See also, People

v. McDowell, 69 Cal 2d. 737, 746-750, 73 Cal. Rep. 1, 447 P. 2d. 97, (1968) and People v. Ibarra, 60 Cal. 2d. 460, 464, 34 Cal. Rep. 863, 386 Pac. 2d. 487, (1963)). In re Greenfield, 11 Cal. App. 3d. 536, 541, 89 Cal. Rep. 847, (1970), held that where through the ineffectiveness of counsel, a defendant is deprived of valid defenses, the resulting judgment of guilt will be reversed on appeal or vacated by a writ of habeas corpus."

All the cases cited in petitioner's "Motion To Vacate Judgment and Set Aside Plea Of Guilty" and "Motion To Dismiss Counsel" are hereby made a part of, included and incorporated herein by reference.

Petitioner's plight,is, owing to the repeated advisement of innumerable attorneys over five years that there existed no recourse against petitioner's tormentor's at NRSD 12-26, the United States Attorney's office refusal to prosecute the criminals thereat and the complaining witness herein, and his own counsel's intial false pretense of agreement with petitioner's position and subsequent turncoat surprise action to show his true colors, uniquely similar to the defendants in Greenfield and Milani, supra, in that because of Mr. Mintz's adamant advocacy exclusively of petitioner's guilt and the court's erroneous refusal to allow the only person with sufficient knowledge and belief of the true facts to handle the reins of his case, namely, petitioner, petitioner has been effectively deprived of his right against self-incrimination guaranteed by the Fifth Amendment to the United States Constitution.

CONCLUSION

In view of all of the foregoing, petitioner respectfully requests that the Petition For A Writ Of Certiorari be granted and that the charges be dismissed.

APPENDIX

AMENDMENT V

Criminal Proceedings and Condemnation of Property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U. S. C., Title 18, §3

Accessory After the Fact

Whoever, knowing that an offense against the United States has been committed, receives, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.

Except as otherwise expressly provided by any Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or fined not more than one-half the maximum fine prescribed for the punishment of the principal, or both; or if the principal is punishable by death, the accessory shall be imprisoned not more than ten years.

U. S. C., Title 18, §1001

Statements Or Entries Generally

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000.00 or imprisoned not more than five years, or both.

California Penal Code, §524

Attempts; Punishment

Every person who attempts, by means of any threat, such as is specified in section 519 of this code, to extort money or other property from another is punishable by imprisonment in the county jail not longer than one year or in the state prison not exceeding five years, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

ARTICLE VI. GENERAL PROVISIONS

Supreme Law of the Land

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

ENLISTMENT CONTRACT

NAVAL PERSONNEL
DO NOT DETACH PART II FROM ORIGINAL

EXEMPT REPORT

1. MONTH, DAY, YEAR OF ENTRY INTO PRESENT PERIOD OF SERVICE: 6 36 26 / 10 / 61	2. HIGHEST GRADE COMPLETED: 11	3. RATE OR RATING: SR	4. NAVY CLASSIFICATION SYMBOL: USNR-R	5. NAME (Last, First, Middle): ROSS, MICHAEL STANLEY
6. PLACE OF ENTRY INTO PRESENT PERIOD OF SERVICE: 056	7. TERM OF ENLISTMENT: 06 YEARS; MINORITY	8. DEPENDENCY STATUS: NONE/NONE	9. NAME OF ACTIVITY ENLISTING ENROLLING: USNRTC LONG BEACH	
10. DATE OF BIRTH: 00 / 27 / 42	11. ENLISTED, REENLISTED IN U. S. NAVY: [X] FROM CIVILIAN; [ ] FROM U.S. NAVY; [ ] REGULAR		12. ENLISTED AT (City and State or County): LOS ALAMITOS, CALIFORNIA	
13. TYPE OF ACCEPTANCE: 00 MONTHS	14. ACTIVE, INACTIVE STATUS (Check only): [ ] REGULAR OR AFLOAT; [ ] RESERVE (Active 24 mos.); [ ] RESERVE ACTIVE DUTY		15. ACCEPTED AT (City and State or County): LOS ALAMITOS, CALIFORNIA	16. NO. OF DEPS.: 1
17. DATE OF ENTRY: 10 / 10 / 61	18. M.O.D.: B	19. GCT (Recruit only): NA	20. EDUCATION: PROT	21. PLACE OF BIRTH: LONG BEACH
22. DATE OF BIRTH: 27 / 42	23. SOCIAL SECURITY PAY GRADE: 1A	24. AREA STATION/BUREAU CODE: NA	25. SOCIAL SECURITY NO.: 560-60-5648 (Check Digit)	26. PLACE OF BIRTH: CALIF
27. DATE OF ENTRY: 10 / 10 / 61	28. CITIZENSHIP: [X] U. S.; [ ] NATURALIZED U.S. ____		29. ASSIGNED TO (Activity and Location): NR SURF DIV. 11-3(L)	30. ALIENAGE TERM: NA
31. DATE OF ENTRY: 00 / 00 / 00	32. PRIOR NET SERVICE FOR PAY PURPOSES: 00 YEARS 00 MONTHS 00 DAYS		33. DIVISION OF SERVICE FROM WHICH LAST DISCHARGED: NA	34.
35. DATE OF ENTRY: 00 / 00 / 00	36. ENTITLED TO REENLISTMENT BONUS: [ ] YES [X] NO	37. CIVILIAN OCCUPATIONAL NUMBER: 4-125-42-1300	38. TYPE OF LAST DISCHARGE: NA	39.
40. DATE OF ENTRY: 00 / 00 / 00	41. COMPLEXION: RUDDY	42. COLOR OF HAIR: BROWN	43. COLOR OF EYES: BROWN	44. RECRUITING SERVICE LOCAL BOARD (Board Number, City and State): #125, LONG BEACH, CALIFORNIA
45. DATE OF ENTRY: 00 / 00 / 00	46. HEIGHT: 69"	47. WEIGHT: 161	48. RACE: CAU	49. HOME ADDRESS AT TIME OF ENLISTMENT (City & County): LONG BEACH, LOS ANGELES
50. DATE OF ENTRY: 00 / 00 / 00				51. CIVILIAN CONTROL CODE: NA

MARKS AND SCARS: ANT:1s ¼ⁿ upper lip;cs ⅜enis;1s ½ⁿ left patella — BLOOD TYPE

POST:1s ½ⁿ rt. cam; VSULA

I CERTIFY that a physical examination has been conducted according to current regulations, and that the above named n has been found by an examining physician to be physically qualified for enlistment.

R. H. HALL, CDR, MC, USNR-R, Certifying Offic

For and in consideration of the pay or wages due to the ratings which may from time to time be assigned me during the co

A. A. MAZUR, CDR, USN of the United States Navy, as follows:
(Name of Enlisting Officer)

Enuance of my service, I agree to and with

First: To enter the service of the Navy of the United States and to report to such station or vessel of the Navy as I may be ordered to join, and to the utmost of my power and ability discharge my several services or duties and be in everything conformable and obedient to the several requirements and lawful commands of the officers who may be placed over me.

Second: I oblige and subject myself to serve 06 Years from 10 MAY 1961 unless sooner discha
(Term) (Date) (Year)
during minority until
(Date) (Year)

by proper authority, and on the conditions provided by Section 5540 of Title 10 of the U. S. Code, as printed on the reverse sid

this contract.

In the event of a National emergency declared by the President or in the event of war during my term of service in the Navy, or in the event of a National emergency declared by the Congress or in the event of war during my term of service in Naval Reserve, I oblige and subject myself to serve until six months after the end of the war or National emergency if so re by the Secretary of the Navy unless I voluntarily reenlist or extend my enlistment. I understand that when so retained the Con of one-quarter pay as specified in Section 5540 of Title 10 of the U. S. Code is not applicable in time of war.

I also oblige myself, during such service, to comply with and be subject to such laws as have been, or may hereafter be en by the Congress of the United States, and to regulations issued pursuant thereto, and to submit to treatment for the prevent smallpox, typhoid (typhoid prophylaxis), and to such other preventive measures as may be considered necessary by naval author

Third: I am of the legal age to enlist; I have never deserted from and I am not a member of the Armed Forces of the U States, the U. S. Coast Guard or any reserve component thereof; I have never been discharged from the United States Navy other service on account of disability or through sentence of either civilian or military court; and I have never been discharg any service, civil or military, except with good character and for the reasons given by me to the recruiting officer prior to enlis

Fourth: I understand that upon enlistment in a Reserve component of the United States Navy, or upon transfer or assig thereto, in time of war or national emergency declared by the Congress, or when otherwise authorized by law, I may be ord tive duty for the duration of the war or National emergency and for six months thereafter.

Fifth: I understand that if I become a candidate for the Naval Academy and fail to pass the entrance examination, I returned to general service.

Sixth: I have had this contract fully explained to me, I understand it, and certify that no promise of any kind has been made concerning assignment to duty, or promotion during my enlistment.

Oath of Allegiance: I, MICHAEL STANLEY ROSS do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice.

And I do further swear (or affirm) that all statements made by me are true and given in this record are correct.

SIGNATURE IN OWN HANDWRITING SURNAME TO RIGHT Michael Stanley Ross

Subscribed and sworn to before me this 10th day of May, A. D. 196

and content perfected.

*Complete, or if not above, substantiated. A. A. MAZUR, CDR, USN OFFICIAL TITLE CO USNRTC LBEACH CALIF

RESIDENCE AND RANK

SUBMITTED TO BUREAU OF NAVAL PERSONNEL

PACIFIC LIGHTING SERVICE AND SUPPLY COMPANY

MAILING ADDRESS: P.O. BOX 54790 TERMINAL ANNEX LOS ANGELES 90054
GENERAL OFFICES: 720 WEST EIGHTH STREET, LOS ANGELES, CALIFORNIA

July 3, 1967

r. F. B. Williams
djudication Officer
eterans Administration
egional Office
380 South Sepulveda Boulevard
os Angeles, California 90073

ear Mr. Williams:

First of all, I wish to find out upon which evidence you base
ur accusations.

Secondly, whatever the source of your material I intend to
sagree with both parts of your insinuations. Not only this,
t also I have several prominent people who feel the preponderence
the weight of the evidence in this case is in my favor. In
dition, several witnesses are available to testify to the crecidence
my statements--they were all present at various times durings
is unfortunate situation. Added together, or taken separately,
eir statements indicate very precisely and definitely the
correctness of your statement.

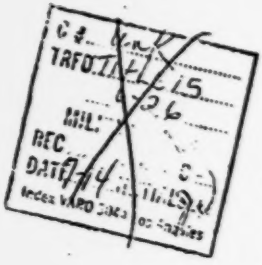
Due to these circumstances, it seems that the fairest disposition
this case would be a hearing before a judge with all appropriate
tnesses present to give their testimony.

For the present, please consider this a definite notice of
agreement.

Sincerely yours,

Michael S. Ross

Michael S. Ross



23

22

NOTICE OF DISAGREEMENT
Recorded OCT 20 1967

that he would not be able to successfully pursue further military service, and that he would benefit from continued outpatient psychiatric treatment in a civilian facility. He was thereafter discharged from service because of his condition.

THE LAW AND REGULATIONS

Service connection may be granted for disability resulting from disease or injury incurred in or aggravated by wartime service. (38 U.S.C. 310)

A veteran who served during a period of war or after January 31, 1955, is presumed in sound condition except for defects noted when examined and accepted for service. Clear and unmistakable evidence that the disability existed before service will rebut the presumption. (38 U.S.C. 311, 337)

A preexisting injury or disease will be considered to have been aggravated by active wartime service, where there is an increase in disability during such war service, unless there is clear and unmistakable evidence that the increase in disability is due to the natural progress of the condition. Aggravation may not be conceded where the disability underwent no increase in severity during service on the basis of all the evidence of record pertaining to the manifestations of the disability prior to, during and subsequent to service. (38 U.S.C. 353; 38 C.F.R. 3.306)

DISCUSSION AND EVALUATION

The Board in reaching its determination in this case has carefully considered the entire record in conjunction with the statements made by the veteran. In this regard, the record clearly demonstrates that the manifestations in service resulting in the veteran's hospitalization were a continuation of a behavioral pattern that had been present for a number of years. It was felt that he would not be able to successfully pursue further military service and he was therefore discharged from service. To establish entitlement to service connection of a preexisting condition by way of aggravation, the evidence as a whole must establish that there was an increase in the basic pathology during service. The evidence in this case, however, only demonstrates continuing manifestations of a long-standing condition. As to the veteran's contentions that data recorded in service was incorrect, there would have been no reason for the examiners to report facts other than those related by the veteran.

It should also be pointed out that "active service" for the purpose of veterans' benefits is defined by law. With respect to the period that

SUMMARY OF EVIDENCE:

SERVICE SUMMARY

Service: Feb. 1966 to Aug. 1966

Date of birth: Oct. 27, 1942

After approximately 4 months of active service the veteran was admitted to the hospital June 17, 1966 as a transfer. He gave a history of disturbed interpersonal relationships for several years and a history that he had been in psychiatric treatment at various times prior to his entry into service. He had an acute reaction and was admitted to hospita Diagnosis was made of incipient simple schizophrenia and it was felt that he would best be considered to have functioned as an ambulatory schizophrenic over a number of years. Condition was held to have existed prior to entry into service and aggravation of the disability was not demonstrated.

OTHER EVIDENCE AND ADJUDICATION ACTIONS

Dec. 9, 1966 — Original claim was filed.

June 24, 1967 — Notice of disallowance was mailed to the veteran.

July 7, 1967 — Received veteran's notice of disagreement. The veteran is apparently under the impression that the matter can be taken to court for a hearing before a judge.

PERTINENT LAW: REGULATIONS:

Inasmuch as veteran has implied that he would bring a law suit the following is cited for his information.

Except as provided in certain cases of insurance and vocational rehabilitation, in home, farm and business loans, the decisions of the Administrator of Veterans Affairs or any question of law or fact concerning a claim for benefits or payments under any law administered by the Veterans Administration shall be final and conclusive and no other official or any Court of the United States shall have power or jurisdiction to review any such decision. (38 USC 211)

Service connection may be granted for disability resulting from disease or injury incurred in or aggravated by active military service. (38 USC 310 & 331)

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 12 1973

DENNIS R. MATHEWS, CLERK
U. S. COURT OF APPEALS

MICHAEL S. ROSS,	)	
Petitioner,	)	CA MISC. 72-8143
vs.	)	DC C-72-1437 (CBR)
STATE OF CALIFORNIA,	)	
Respondent.	)	

Docketed

O R D E R

Petitioner seeks a certificate of probable cause for appeal following adverse orders of the district court entered on September 28, 1972, denying a petition for a writ of habeas corpus and on November 10, 1972, denying an application for a certificate of probable cause.

The application is denied as legally frivolous for the reasons expressed by Judge Renfrew in the above orders.

Richard H. Chambers

Walter E. Hufstedler

United States Circuit Judges

FILED
NOV 13 1972
CLERK, U.S. DIST. COURT
SAN FRANCISCO

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MICHAEL S. ROSS, Petitioner,	)	No. C-72-1437-CBR
vs.	)	ORDER
STATE OF CALIFORNIA, Respondent.	)	

Pursuant to Title 28, United States Code, Section 2253, and in light of Rule 22(6) of the Federal Rules of Appellate Procedure, this Court finds that there is no probable cause for an appeal in the above-entitled case, and that a certificate of probable cause should not issue.

Dated: November 10, 1972.

CHARLES B. RENFREW
Charles B. Renfrew
United States District Judge

FILED

JUL 09 1971

W. T. PAASCH, County Clerk
CONTRA COSTA COUNTY
BY _____ Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
MICHAEL S. ROSS, Defendant.

No. CR 14177

MEMORANDUM OF DECISION

Defendant moves for a certificate of probable cause "for the reasons previously stated in Defendant's Motion to Dismiss Counsel and Motion to Vacate Judgment and Set Aside Guilty Plea."

While defendant in said motions suggests his counsel "exerted undue influence" and "extortive means" to coerce his plea; "opposed his position" "insufficiently and inadequately" represented him etc., there is absolutely no evidence to support the alleged conclusions. Defendant also, after a 1203.03 P.C. study and recommendation, asserts "breach of a plea bargain". Again there is no evidence of such.

In open Court on July 9, 1971, the defendant, being fully advised, withdrew his motion to dismiss counsel and to withdraw his plea, and the order he now seeks to appeal from was made.

While the report furnished the Court pursuant to 1203.03 P.C. by the Department of Corrections indicates the defendant has problems needing help, including psychiatric treatment, there is no question he understood the nature and character of the charges herein and all the proceedings herein. He was ably represented, and while he expresses unhappiness with the result, this has nothing to do with the question of his guilt

EXHIBIT - 1-19

EXHIBIT 15

HERMAN W. MINTZ
JAMES GILLER
DAVID A. HIMMELMAN
LINCOLN N. MINTZ

ROBERT S. SHUKEN
NORTON B. GOLDSTEIN

MINTZ, GILLER, HIMMELMAN & MINTZ
ATTORNEYS AT LAW
1418 BROADWAY, SUITE 618
OAKLAND, CALIFORNIA 94612
[illegible]

April 20, 1971

Michael S. Ross
2012 S. Pelham Avenue
Los Angeles, California, 90025

Re: People vs. Michael Stanley Ross, No. 15809

Dear Mr. Ross:

We have your letter of April 14, 1971. If you desire to set aside your plea of "guilty" as entered on April 1, 1971, at the Municipal Court in Concord, then you will have to retain other counsel to do so. We will not move to do this on your behalf, as we feel that your plea was entered voluntarily, with full knowledge and understanding of the consequences, and with full knowledge and understanding of your rights and of the fact that by the entry of your plea you were waiving all rights which you would have and which were enumerated for you at the time of your plea. It is in fact possible for you to proceed to a trial on the merits, but you should be aware that you might be precluded from doing so. On the other hand, if the court were to allow you to so proceed, it would be futile and most foolish. The facts of the offense charged and to which you entered your plea are most clear. You simply cannot contest the conduct of the Vietnam War and the professional capacities of Dr. Carden in this fashion.

On the other hand, if you desire for us to proceed as your counsel, then we have this advice for you. You say that you would be willing to see a psychiatrist, if it is absolutely mandatory. You further state that you absolutely and positively refuse to pay for the services of a psychiatrist. You say that you have made arrangements to see a Social Worker at the Los Angeles County Mental Health Center in Santa Monica and that you will continue to visit him if the court requires. In fact, rest assured that, if you wish probation, you will do whatever the court asks of you, whether this is seeing a psychiatrist, paying for the services of a psychiatrist, or whatever reasonable conditions should be imposed.

You state that the real reason for your communication is to set the facts straight with respect to illegality carried

Respectfully submitted,

MICHAEL S. ROSS
2879 Rutgers Avenue
Long Beach, Ca 90815
In Propria Persona